

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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In re BRIDGESTONE/FIRESTONE, INC. ATX,)	
ATX II, AND WILDERNESS TIRES)	Master File No. IP 00-9373-C-B/S
PRODUCTS LIABILITY LITIGATION)	MDL No. 1373
_____)	(centralized before Hon. Sarah Evans
)	Barker, Chief Judge)
THIS DOCUMENT RELATES TO ALL)	
ACTIONS)	

ORDER ON EXPLORER DIMINUTION IN VALUE PLAINTIFFS’
MOTION FOR CLARIFICATION AND/OR RECONSIDERATION

This matter is before the Court on the “Ford Explorer Diminution in Value Plaintiffs’ Motion for Leave to File the Motion for Clarification and/or Reconsideration of this Court’s Order on Plaintiffs’ Management Structure and Various Case Management Matters Dated December 8, 2000 (“Motion for Reconsideration”).¹ The Court has reconsidered the aspects of its December 8 Order addressed by the Motion for Reconsideration, and has also considered defendant Ford Motor Company’s opposition to the Motion for Reconsideration. For the reasons set forth below, the Court grants in part and denies

¹Perhaps in an attempt to further the perception of a conflict between these plaintiffs and the other class plaintiffs in this MDL, the moving plaintiffs (hereafter, “Explorer Diminution plaintiffs”) have filed a motion for leave to file their motion without the signature of a member of the Executive Committee. Nothing in the Court’s Order of December 8, 2000 requires a separate motion for leave.

in part the relief requested by the Motion for Reconsideration.

The Motion for Reconsideration is premised on a broad assertion that the unified management structure for plaintiffs adopted by the Court in its December 8 Order creates “an ethical conflict for counsel” whom the Court appointed to leadership positions. (Motion for Reconsideration at 3) The Explorer Diminution plaintiffs cite neither legal authority nor concrete examples to support their position, and the Court determines that no ethical conflict now exists to warrant the creation of a separate management structure for these cases. As the Judicial Panel on Multidistrict Litigation pointed out in its Transfer Order, section 1407 does not require a complete identity or even a majority of common factual issues and legal theories. In re Bridgestone/Firestone, Inc., ATX, ATX II and Wilderness Tires Products Liability Litigation, MDL No. 1373 (J.P.M.L. Oct. 24, 2000) at 3. Such differences are present in many, if not most, MDLs. Moreover, the MDL must accommodate and can accommodate differences in factual and/or legal focus without resort to separate management tracks that may compromise the goals of consistency and efficiency the MDL device is designed to advance.

Although the Court is unpersuaded by the Explorer Diminution plaintiffs’ conflict argument, it nevertheless believes that these same goals of consistency and efficiency will be served by certain modifications of the Court’s December 8 Order.

First, the Explorer Diminution plaintiffs shall be entitled to designate, subject to approval of the Court, one member of the Plaintiffs’ Executive Committee, thus expanding that committee to twelve members.² Second, by virtue of their representation on the Executive Committee, the Explorer

²The Explorer Diminution plaintiffs shall make this designation immediately, so that upon the Court’s approval of the designation, this Executive Committee member can participate meaningfully in

Diminution plaintiffs shall be entitled to participate in any class settlement discussions and in the drafting of the master class complaint. Indeed, the Court expects the Explorer Diminution plaintiffs' counsel, through the Executive Committee and their other committee positions, to cooperate and participate on all relevant pre-trial matters.

The Court denies the request that the Explorer Diminution plaintiffs separately plead and argue class certification as it relates to their claims. That request is inconsistent with the plaintiffs' inclusion on the Executive Committee and their participation in that effort as part of the Plaintiffs' Management Structure. With respect to the Explorer Diminution plaintiffs' request that they be entitled to propose class counsel should an Explorer diminution class be certified, the Court modifies its December 8 Order to make no provision in this regard. Rather, the issues of how class counsel will be chosen and who will propose class counsel will be determined at a later date when the contours of the proposed classes are more clearly developed.

Finally, the Court denies the Explorer Diminution plaintiffs' request for their own liaison counsel. As explained above, no ethical conflict requires it. Furthermore, the efficient management of the class portion of this MDL counsels against it. Irwin Levin, in his role as liaison counsel for the class cases generally, shall serve as liaison counsel for the Explorer Diminution cases.

On a separate matter, the Court now approves the nominations of Theodore Leopold to serve on the Discovery/Expert Committee and Stephen Neuwirth to serve on the Settlement/ADR Committee.

the formulation of the case management plan and the master complaint.

It is so ORDERED this ____ day of December, 2000.

SARAH EVANS BARKER, CHIEF JUDGE
United States District Court
Southern District of Indiana

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